

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA    )  
  )  
                          v.                                No. 1:11-cr-006-01-JL  
  )  
BRIAN MAHONEY                                )

GOVERNMENT’S OBJECTION TO & MOTION TO STRIKE DEFENDANT’S *PRO SE*  
MOTION TO STAY PENDING A REVIEW OF APPELLATE COURT Docket # 111

The United States of America, by John P. Kacavas, United States Attorney for the District of New Hampshire, objects to and moves to strike the defendant’s *pro se* “Motion In Stay Pending a Review of Appellate Court (docket #111) as follows:

1. The Motion should be stricken pursuant Local Rule 4.3(e)

The defendant is not acting *pro se*, but is instead represented by counsel. Nonetheless, he has filed multiple *pro se* pleadings, including the instant Motion, Docket #111.

This Court has enacted a Local Rule that prohibits *pro se* filings by represented parties, except in limited circumstances.

Civil Local Rule 4.3(e) states:

**(e) Pleadings Filed by Represented Parties.** Any litigant who is represented by an attorney may not file a pleading in a case unless:

- (1) The court grants a motion for leave to file a *pro se* pleading; or
- (2) The litigant is filing a motion related to the status of counsel.

Any *pro se* pleading that does not comply with this rule shall not be added to the court's docket or presented to a judicial officer for ruling and shall be returned to the filer.

Although Local Rule 4.3 is a civil rule, Criminal Local Rule 1.1(d) makes it applicable to criminal proceedings.

Rule 1.1 states:

**1.1 General Rules**

...  
**(d) Scope.** LCrR 1.1 - 58.1 shall govern the procedure in all criminal actions. Civil local rules shall apply insofar as they do not conflict with any statute, federal or local criminal rule, or individual order. The following civil/general local rules shall apply in criminal actions: Rules 1.1(c),(d) and (g), 1.2 - 1.3, **4.3(e)**, 4.4 - 5.4, 7.1(a),(c), (d) and (e), 7.2(a),(c) and (e), 7.3, 39.1, 39.3, 40.2, 45.1 - 47.3, 54.1, 65.1.1, 67.2 - 67.4, 72.1, 72.2, 77.1, 77.3,77.5, 77.6, 80.1, 83.1, 83.2(a),(b) and (d), 83.3 - 83.5, 83.6(a)-(c), and (e), 83.7 -83.12, 83.13(b)-(e), 83.14. (Emphasis added).

The filing and docketing of such unsanctioned pleadings, in violation of the Court's Local Rules, not only creates additional, unnecessary work for the Court and opposing counsel, but also runs the very real risk of inuring to the detriment of the unschooled defendant who is allowed to file them. In this case, although not necessarily in this *pro se* pleading, the defendant has made numerous statements in, and attached to, prior *pro se* pleadings that may be used by the government against him at trial as admissions by a party-opponent, pursuant to Fed. R. Evid. 801(d)(2).

Because neither of the exceptions to LR 4.3(e) are present in this case, the government respectfully requests that the Court strike Docket #111.

2. The Motion Should be Stricken Because the Court has Ruled the Defendant Incompetent

On June 29, 2012 the Court issued an Order (docket #107) finding, "after considering the evaluation reports and observing the defendant, by a preponderance of the evidence that the defendant is presently suffering from mental diseases or defects (bipolar disorder, personality disorder NOS with antisocial or narcissistic features, problems related to interaction with the legal system/crime) rendering him mentally incompetent to assist properly in his defense, and/or to conduct his own defense (as he desires to do.)" Order, docket # 107, at pp 1-2.

Because the defendant is mentally incompetent, in addition to being in violation of the Local Rules, the Court should not allow the defendant to file *pro se* pleadings and should not

require the government to respond thereto.

WHEREFORE the government respectfully objects to, and moves to strike, the defendant's Motion (docket #111).

July 23, 2012

Respectfully submitted,

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**CERTIFICATION OF SERVICE**

I certify that a copy of this Objection has been served upon counsel of record, Andrew Schulman, Esq., via ecf filing notice today, July 23, 2012.

/s/ Arnold H. Huftalen  
Arnold H. Huftalen